

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 171 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI @ HARSADKUMAR

MOHANBHAI MASRU

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Ld. AGP Mr. Samir Dave for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 27/09/1999

ORAL JUDGEMENT

1. Heard learned Advocate Mrs. Subhadra G. Patel for the petitioner and learned A.G.P. Mr. Samir Dave for respondent Nos. 1 to 3.

2. That the order of detention dtd. 22/11/98 passed by the respondent NO. 2 - Police Commissioner, Rajkot City against the petitioner by virtue of powers conferred

under Sec. 3 (1) of Gujarat Prevention of Anti-social Activities Act, 1985 (PASA for short), is challenged in the present petition under Article 226 of the Constitution of India.

3. That the grounds of detention supplied to the petitioner under Sec. 9 (1) of PASA, are produced at Annexure - B. That the said grounds interalia indicate that two criminal cases in respect to the offence made punishable under the provisions of Chapter XVII of IPC, were registered against the petitioner at Rajkot City, in Malaviya Nagar Police Station and A Division Police Station, respectively. That the said cases were registered in respect to incident occurred on 29-4-97 and 23-9-98. The said grounds further indicate that two witnesses have supplied information against the petitioner vide their statement dtd. 18-11-98 and 19-11-98. That the incident in respect to which the information is supplied by the said witnesses, are of 3-9-98 and 2-8-98, respectively. That the said witnesses have agreed to supply the information on assurance of anonymity as they feared that the petitioner might cause harm to them. That on consideration of said material, the detaining authority concluded that the petitioner is a "dangerous person" within the meaning of Sec. 2 (c) of PASA. That resort to general provisions of law are insufficient to prevent the petitioner from continuing his anti-social activities which is prejudicially affecting the maintenance of public order and as such the impugned order is passed.

4. The petitioner has challenged the legality, validity and propriety of the order on numerous grounds. It has been contended that the incident in respect to which criminal cases have been registered are of dtd. 29-9-97 and 23-9-98, respectively. That incidents for which the information is supplied by anonymous witnesses are of 3-9-98 and 2-9-98. Thus, after September, 1998, there is no material on record that the alleged anti-social activity of the petitioner was continued and likely to affect the maintenance of public order. That the impugned order having been passed on 22-11-98. It suffers from infirmity of delayed action and as such the detention order is invalid.

5. It is further submitted that the documents supplied alongwith the grounds of detention contain certain documents written in English language. That the petitioner does not know English and as such the non-supply of true translation of the such documents, prevented the petitioner from making the effective

representation against his detention which has vitiated the subjective satisfaction and the order is bad in law.

6. It is also contended that looking to the nature of the offences alleged against the petitioner, the magnitude and gravity of offences are such which could not have disturbed the maintenance of public order. Furthermore, though the petitioner is released on bail in respect to the offences registered against him on 29-10-98, no attempts are made on behalf of the authority to cancel the bail. The detaining authority has failed to consider the said aspect as a less drastic remedy to prevent the petitioner from continuing the alleged anti-social activity. That in support of the said submissions, reliance is placed on the observations made by Division Bench of this Court in the matter of Zubedabibi Rasidkhan Pathan, reported vide 1995 36(2) G.L.R. 1134.

7. Learned AGP Mr. Samir Dave, relying on affidavit filed by the respondent No. 2 has urged that in view of the statements given by two witnesses on 18-11-98 and 19-11-98, the impugned order having been passed on 22-11-98 could not be said to be a delayed action. However, learned A.G.P. could not reply to the query that the affidavit-in-reply is totally silent to the contention raised vide para 8 and amended para 9 (a) of the petition. That vide para 8, the petitioner has contended that without the translation of documents which were in English supplied to the petitioner had prevented the petitioner from making effective a representation. Vide para 9 (a), it is contended that the detaining authority has failed to consider the less drastic remedy regarding the cancellation of bail, in cases in which the petitioner was arrested, which shows non application of mind.

8. It may be noted that in the matter of Zubedabibi Rasidkhan Pathan Vs. State of Gujarat, (supra) the Division Bench of this Court has considered the aspect of less drastic remedy, by the detaining authority and as elaborated in para 5 of the judgement, that under Sec. 437 Sub-Section 5 of Code of Criminal Procedure, 1973, bail granted to the accused could be cancelled by the court on showing sufficient ground. That in the matter of Yunusbhai Hasanbhai Ghanchi Vs. District Magistrate, reported vide Letters Patent Appeal NO. 1056/99, the Division Bench of this Court having referred to the case of Zubedabibi, (Supra) has observed that non-consideration of less drastic remedy like cancellation of bail by the detaining authority while

formulating the grounds of detention suggests non-application of mind which vitiates the subjective satisfaction and the detention order becomes illegal.

9. In the instant case, the ground of detention does not disclose any material as to whether the respondent No. 2 has ever considered the aspect of cancellation of bail while holding that as the petitioner-detenu is released on bail on 29-10-98, is likely to repeat his anti-social activity and as such the impugned order is required to be passed.

10. Following the said observations, made by the Division Bench in the above stated Letters Patent Appeal, I am constrained to hold that the impugned order dtd. 22-11-98 passed by the respondent NO. 2 against the petitioner - detenu is bad in law and cannot be sustained.

11. In the result, the petition is allowed. The impugned order dated 22/11/98 passed by the respondent No. 2 - Commissioner of Police, Rajkot City, Rajkot, against the petitioner is hereby quashed and set aside. Petitioner-detenu namely Manubhai alias Harshadkumar Mashru is ordered to be set at liberty forthwith, if not required in any other case.

Rule is made absolute.
